

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

JEREMIAH MILLER  
Co-Plaintiff

and

KRISTEL ORETO  
Co-Plaintiff

V.

ORIGINAL MEDIA PUBLISHING LLC,  
MTV NETWORKS ENTERPRISES, INC.,  
JAMIE DAVIES, individually, and TREY  
BENHAM, individually  
Defendants

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§ A12CV1147 LY

Civil Action No.

**PLAINTIFFS' ORIGINAL COMPLAINT & APPLICATION FOR TEMPORARY  
RESTRANING ORDER, INJUNCTIVE AND OTHER RELIEF**

Plaintiffs Jeremiah Miller (“MILLER”) and Kristel Oretto (“ORETO”) allege the following against Defendants Original Media Publishing LLC (“ORIGINAL”), MTV Networks Enterprises, Inc. (“MTV”), Jamie Davies, individually, (“DAVIES”), and Trey Benaham, individually (“BENAHAM”):

## Parties

1. MILLER is an individual visual dermagraphic artist living in Austin, Texas. MILLER is a high profile dermagraphic artist that was a participant in Season 1 of the television show "Ink Master", produced by ORIGINAL and aired through MTV on SPIKETV. MILLER is the creator of a graphic visual piece of art, entitled "New School Piston". MILLER is in the business of creating and providing custom dermagraphic tattoo art. When MILLER created New School Piston, MILLER'S private client, who received the tattoo of it, agreed that

MILLER would own the artwork and thus, the copyright in New School Piston. (See image of New School Piston in Exhibit “1”)

2. ORETO is an individual visual dermagraphic artist living in Philadelphia, Pennsylvania. ORETO is also a high profile dermagraphic artist featured in numerous Tattoo Magazines and print articles. ORETO is the creator of two (2) graphic visual pieces of art respectively entitled: (1) “Adopt Peacock”; and (2) “Baby Peacock” (collectively referred to as “Peacock”). ORETO is in the business of creating and providing custom dermagraphic tattoo art. When ORETO created Peacock, ORETO’S private client ,who received the tattoo of it, agreed that ORETO would own the artwork and thus, the copyright in Peacock. (See image of Peacock in Exhibit “2”).
3. ORIGINAL is a limited liability company with its principal place of business in the State of New York located at 175 Varick Street, 7<sup>th</sup> Floor, New York, NY 10014. ORIGINAL is represented by Loeb & Loeb LLP, located at 345 Park Avenue, New York, New York, 10154.
4. MTV is a Delaware corporation, which houses Spike TV as a subsidiary, and is located at 1515 Broadway, New York, New York 10036. MTV’S registered agent is located at 80 State Street, Albany, New York 12207. MTV has in house counsel of its own which has corresponded with counsel for Plaintiffs.
5. DAVIES is an individual that is participating on Season 2 of the reality television show “Ink Master”, in New York City, produced by ORIGINAL and aired through MTV on SPIKETV. Jamie Davies is able to receive correspondence at 2865 Bechelli Lane, Redding CA 96002, or wherever he may be found.

6. BENHAM is an individual that is participating on Season 2 of the reality television show “Ink Master”, in New York City, produced by ORIGINAL and aired through MTV on SPIKETV. BENHAM is able to receive correspondence at 829 N. Dixie Highway, Radcliffe, Kentucky 40160, or wherever he may be found.

**Jurisdiction and Venue**

7. This is an action for copyright infringement arising under the Copyright Act of 1976, as amended, 17 U.S.C. §101 *et. Seq.* (the “Copyright Act”). The Court has subject matter jurisdiction under 17 U.S.C. §501 and 28 U.S.C. §§1331 and 1338(a).
8. Venue is proper in this District under 28 U.S.C. §§1391(b) and 1400 because Defendants do business, may be found and are subject to personal jurisdiction here.

**Facts**

**JEREMIAH MILLER**

9. MILLER is an award winning visual dermagraphic artist who works in various mediums, including the creation, design, and application of tattoo art to bodies.
10. On February 23, 2011, while working in Austin, TX MILLER created and applied an original and distinctive tattoo, New School Piston, to the outside of the upper right arm of a private client, from their shoulder to the bicep. True and accurate screen grabs from MILLER’S time lapse capture of MILLER in the process of tattooing New School Piston to his private client are attached to this Complaint as Exhibit “3”.
11. MILLER, doing business at that time at his shop PIGMENT, in Austin, TX, is the sole creator, author, and owner of all rights, including copyright, in New School Piston, which is original and fixed in a tangible medium of expression.

12. On the day MILLER created New School Piston, his private client signed a release form acknowledging “that all artwork, sketches and drawings related to [his] tattoo and any photographs of [his] tattoo are property of Jeremiah Miller, individually”. A copy of this release is attached hereto as Exhibit “4”

13. MILLER has registered the copyright in New School Piston. A true and correct copy of the Certificate of Registration for New School Piston, No. VA 1-837-869, is attached as Exhibit “5”.

14. MILLER has never copied New School Piston onto anyone else and has never licensed or otherwise authorized anyone else to copy, distribute, or publicly disseminate the New School Piston or make derivative works based upon it.

KRISTEL ORETO

15. ORETO is also an award winning visual dermagraphic artist who works in various mediums including the creation, design, and application of tattoo art to bodies.

16. On April 14, 2012, while working Philadelphia, PA ORETO created and applied an original and distinctive tattoo, Baby Peacock, to right back shoulder of a private client. ORETO’S original sketches and filled in color tattoo of Baby Peacock are attached to this Complaint as Exhibit “6”.

17. On May 1, 2012, while working in Philadelphia, PA ORETO created and applied a derivative work of Baby Peacock, entitled Adopt Peacock, in her Peacock Series to the upper left arm, from shoulder to elbow, of a private client. ORETO’S original sketches and filled in color tattoo of Adopt Peacock are attached to this Complaint as Exhibit “7”.

18. ORETO is the sole creator, author, and owner of all rights, including copyright, in Peacocks, which are original and fixed in a tangible medium of expression.

19. On the days ORETO created Peacocks, her private clients signed a release form acknowledging “that all artwork, sketches and drawings related to [her] tattoo and any photographs of [her] tattoo are property of the Artist [ORETO], individually”. A copy of this release is attached hereto as Exhibit “8”.
20. ORETO has registered the copyright in Peacocks. A true and correct copy of the Certificate of Registration for Peacocks by Kristel Oretto, No. VA-1-836-120, is attached as Exhibit “9”.
21. ORETO has never copied Peacocks into anyone else and has never licensed or otherwise authorized anyone else to copy, distribute, or publicly disseminate Peacocks or make derivative works based upon it.

#### **DEFENDANTS' INFRINGEMENT**

22. ORIGINAL is engaged in the production of television programs and home entertainment. MTV is engaged in production and distribution of television programs through television channels such as SPIKE TV, home entertainment and other forms of distribution.
23. ORIGINAL produces a television show for MTV entitled “Ink Master” (the “Show”). MTV broadcasts the Show on its television channel SPIKE TV.
24. Broadcast of Season 2, Episode 4 of the Show features virtually exact reproductions of (1) New School Piston, and (2) a merging of Baby Peacock and Adopt Peacock. The name of the episode in question is entitled “Tattoo Her What?”; and the original air date was October 23, 2012.
25. The reproduction of New School Piston appears on the left outer arm, along the triceps region, from shoulder to elbow of a “canvas”<sup>1</sup>. As used in this Complaint, the term “Pirated Tattoo A” shall refer to any version of New School Piston that appears anywhere but where

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<sup>1</sup> Canvases are live human participants that ORIGINAL selected to receive tattoos from the contestants on the show “Ink Master”.

MILLER originally created it, namely, on the upper right arm of a private client, from their shoulder to the bicep.

26. A close-up of Pirated Tattoo A, from a screen grab of the Show, and New School Piston, from the photograph taken by MILLER, are displayed side-by-side, in Exhibit “10”.
27. The reproduction of ORETO’S Peacocks appears in the pubic/pelvic region of a selected “canvas”. As used in this Complaint, the term “Pirated Tattoo B” shall refer to any version of Peacocks that appear anywhere but where ORETO originally created it, namely on (1) the back right shoulder of a private client<sup>2</sup>; and (2) upper left arm of a private client<sup>3</sup>. Judges on the show even referenced the reproduced tattoo as a “cartoony peacock”.
28. A close-up of the Pirated Tattoo B, from screen grabs of the Show, and Peacocks, from sketches and photographs created and taken by ORETO, are displayed side-by-side, in Exhibit “11”
29. On information and belief, Pirated Tattoo A and B are prominent parts of the Show. The end game to each season of the Show is to outlast tattoo artist competitors. Each Show consists of an elimination challenge where one competitor is eliminated. Tattoos are both heavily critiqued and lauded; and then broadcast to an entire nation in prime time on Tuesday evenings. Neither MILLER nor ORETO are contestants on Season 2 of the Show.
30. At all relevant times, ORIGINAL, MTV, DAVIES, and BENHAM had access to Peacocks and New School Piston, respectively.
31. There is a substantial similarity between the copyrightable expression in New School Piston and Pirated Tattoo A.

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<sup>2</sup> Baby Peacock tattoo

<sup>3</sup> Adopt Peacock tattoo

32. There is substantial similarity between the copyrightable expression in Peacocks and Pirated Tattoo B.
33. Neither MILLER nor ORETO have ever been asked for the permission for, and have never consented to, the use, reproduction, or creation of a derivative work based on New School Piston and Peacocks, respectively, including Pirated Tattoo A and B. Nor have either of them been asked or agreed to the public display, distribution, and broadcast of a Show containing Pirated Tattoo A and B ,or to the use of any of their other exclusive rights in New School Piston and Peacocks, respectively, under the Copyright Act.
34. ORIGINAL, MTV, DAVIES, and BENHAM have all already infringed MILLER and ORETO'S copyrights through the unauthorized copying, distribution, broadcast, and public display of Pirated Tattoo A and B in (1) the original and continued broadcast and distribution of the Show, specifically Season 2, Episode 4; and (2) making an unauthorized derivative work, namely Pirated Tattoo A and B that is based upon and copies virtually all of the copyrightable subject matter of New School Piston and Peacocks, respectively.
35. Further, DAVIES acknowledged the infringement and sent ORETO correspondence through electronic mail, apologizing for unintentionally stealing from ORETO. A genuine, true, and correct copy of this correspondence is attached hereto as Exhibit "12"
36. MILLER and ORETO notified counsel for ORIGINAL; whom MTV has additionally forwarded responsibility to, of the infringements. ORIGINAL and MTV, however, continue to infringe the copyright by continuing online streams of the Show, On Demand access through third party services for television, and re-runs and any possible syndication of the Show.

**Request for Permanent Injunction**

37. Upon the issuance of the Preliminary Injunction, MILLER and ORETO further request that the Preliminary Injunction, upon a final trial on the merits, be made permanent.

**Attorney Fees and Costs**

38. MILLER and ORETO are entitle to an award of attorney fees and costs under 17 U.S.C §505 as a prevailing party.

WHEREFORE, MILLER and ORETO pray that this Court enter judgment in its favor and against Defendants as follows:

- A. A permanent injunction thereafter enjoining and restraining defendants, their agents, servants, employees, attorneys, partners, licensees, divisions, affiliates, parent corporation(s), and all others in active concert or participation with any of them from copying, distributing, publicly displaying, or otherwise making any use of Pirated Tattoo A and B, both in the Show and otherwise.
- B. An award of monetary damages sufficient to compensate MILLER and ORETO for the injuries suffered as a result of Defendants' wrongful conduct;
- C. An award of Defendants' profits and unjust enrichment realized from its infringement;
- D. An award to MILLER and ORETO of their costs and reasonable attorney's fees expended in this action; and
- E. An award of such other and further relief as the Court deems just and proper.

Respectfully submitted,

PARANJPE & MAHADASS LLP

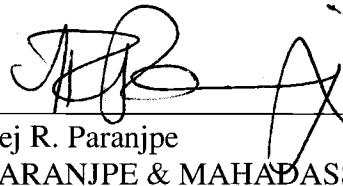
  
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Attorney for Plaintiffs

Co-Counsel:  
Jim Plummer  
Fed ID #: 3692  
Plummer & Kuykendall  
4203 Montrose Blvd, Suite 270  
Houston, TX 77006

**CERTIFICATE OF SERVICE**

I certify that on December 17, 2012, a copy of (1) Plaintiffs' Original Complaint & Application for Temporary Restraining Order, Injunctive and Other Relief; and (2) Notice of Plaintiffs' intent to file for a Temporary Restraining Order and Preliminary Injunction was served by facsimile and email correspondence on the following attorney in charge for ORIGINAL and MTV:

Barry Slotnick  
345 Park Avenue  
New York, NY 10154  
Ph: 212-407-4162  
Fax: 212-658-9843  
Email: [bslotnick@loeb.com](mailto:bslotnick@loeb.com)  
Attorney for Original Media



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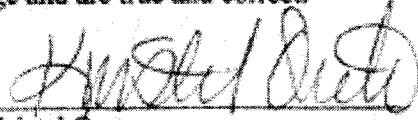
Tej R. Paranjpe  
PARANJPE & MAHADASS LLP

VERIFICATION

STATE OF PENNSYLVANIA      §  
PHILADELPHIA COUNTY      §

Before me, the undersigned notary, on this day personally appeared Kristel Oreto, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

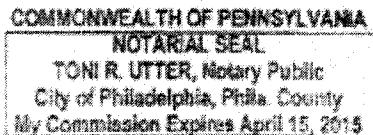
"My name is Kristel Oreto. I am capable of making this verification. I read the Plaintiffs' Original Complaint & Application for Temporary Restraining Order, Injunctive and other Relief. The facts stated in it are within my personal knowledge and are true and correct."

  
Kristel Oreto

Sworn and subscribed before me by Kristel Oreto on 12/11/12, 2012.

  
Notary Public in and for  
the State of Pennsylvania.

My commission expires:



VERIFICATION

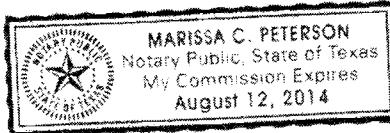
STATE OF TEXAS §  
WILLIAMSON COUNTY §

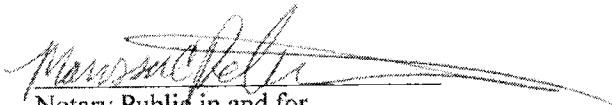
Before me, the undersigned notary, on this day personally appeared Jeremiah Miller, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

"My name is Jeremiah Miller. I am capable of making this verification. I read the Plaintiffs' Original Complaint & Application for Temporary Restraining Order, Injunctive and other Relief. The facts stated in it are within my personal knowledge and are true and correct."

  
\_\_\_\_\_  
Jeremiah Miller

Sworn and subscribed before me by Jeremiah Miller on December 11, 2012.



  
\_\_\_\_\_  
Marissa C. Peterson  
Notary Public in and for  
the State of Texas.

My commission expires: 8/12/14